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**FILED**

APR 10 2007

SECRETARY, BOARD OF  
OIL, GAS & MINING

**BEFORE THE BOARD OF OIL, GAS, AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH**

*Acorn*  
*C/007/0013*

In the Matter of the Request for Agency Action by  UTAHAMERICAN ENERGY INC.,  Petitioner,  For Review of the Division's January 19, 2007 Decision	<b>MOTION TO DISMISS THE PETITION</b>   Cause No. C/007/013-SR-98(1)-A  Docket No. 2007-008
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The Utah Division of Oil, Gas, and Mining (Division) hereby moves the Board of Oil, Gas, & Mining (Board) to dismiss the petition of UtahAmerican Energy, Inc., (Petitioner) for Review of the Division's January 19, 2007 Decision Requiring Modification of its Mining and Reclamation Plan. Under the limitations for review of Division actions as set forth in the Coal Mining Reclamation Act, Utah Code Ann. § 40-10-1 et seq. (West 2004), the rules adopted by this Board pursuant to that Act, Utah Administrative Code R644-100 et seq. (2006), and the Utah Administrative Procedures Act, Utah Code Ann. § 63-46b-1 et seq., the Board lacks jurisdiction to grant Petitioner's request because it was filed more than 30 days after the Decision to be reviewed. Moreover, this request for review is foreclosed by the Board's Order of October 4, 2002 entered pursuant to the Stipulation of Petitioner and the Division staying proceedings and

deferring review until the Division reaches a final decision on the permit package, or Petitioner serves appropriate notice of its intent not to respond to further technical review actions.

Therefore, the Division of Oil, Gas, and Mining moves that the Board dismiss the petition.

Respectfully submitted this 10<sup>th</sup> day of April, 2007.

DIVISION OF OIL, GAS, AND MINING

A handwritten signature in black ink, appearing to read "James P. Allen", written over a horizontal line.

James P. Allen (#11195)

Steven F. Alder (#0035)

Assistant Attorneys General

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DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH**

In the Matter of the Request for Agency  
Action by

UTAHAMERICAN ENERGY INC.,

Petitioner,

For Review of the Division's  
January 19, 2007 Decision

**DIVISION'S RESPONSE TO  
UTAHAMERICAN ENERGY'S  
PETITION FOR REVIEW OF THE  
DIVISION'S JANUARY 19, 2007  
DECISION**

Cause No. C/007/013-SR-98(1)-A

Docket No. 2007-008

The Utah Division of Oil, Gas, and Mining (Division) submits this response to the petition of UtahAmerican Energy, Inc., (Petitioner) for Review of the Division's January 19, 2007 Decision Requiring Modification of its Mining and Reclamation Plan. The Division has separately moved that the Board dismiss the petition for lack of jurisdiction and for other reasons. The relief requested in the Petition should be denied. The Division's January 19 Decision was entirely consistent with the relevant provisions of Utah and Federal law, and was within the scope of the Board's 2001 order denying UEI's permit application and remanding the matter to the Division.

## STATEMENT OF FACTS

The Division believes that the statement of facts submitted by petitioner presents an incomplete picture of the continuing review process. Specifically, the statement fails to acknowledge UEI's own role in the delays that occurred throughout the process, or how its failure to timely provide necessary information resulted in the cycle of deficiencies and submissions. Portions of this statement of facts are repeated verbatim from the Division's Memorandum accompanying its Motion to Dismiss the Petition and are stated here for convenience. To avoid duplication, exhibits mentioned below refer either to the exhibits submitted with UEI's petition (e.g. "Petr.'s Ex. A") or the exhibits submitted by the Division with its parallel motion to dismiss UEI's petition (e.g. "Div'n Ex. 1").

1. On December 14, 2001 the Board issued its Order remanding Petitioner's permit application to the Division for further action. *S. Utah Wilderness Alliance v. Div'n of Oil, Gas, & Mining*, Utah Bd. Oil, Gas, & Mining Docket No. 2001-027, Cause No. C/007/013-SR98(1) (Dec. 14, 2001) (Petr.'s Ex. A).
2. On February 11, 2002 UEI submitted a new application. The Division reviewed the information submitted, requested additional information, reviewed that information, determined that the application was administratively complete, advertised notice of the application, and based on a request from the Southern Utah Wilderness Alliance (SUWA) held an informal conference on May 21, 2002. Affidavit of Pamela Grubaugh-Littig, April 10, 2007 [hereinafter "Grubaugh Aff."] (Div'n Ex. 1).
3. The Division issued a decision on July 19, 2002 partially denying the application. UEI and SUWA each sought Board review of this decision. Grubaugh Aff.

4. On August 27, 2002, Petitioner and the Division entered into a "Stipulation and Joint Motion to Stay Proceedings on Appeal" agreeing to withhold appeals from the Division's subsequent technical review decisions regarding UEI's permit application until the Division issued a "final decision to grant or deny UEI's permit application package," or until UEI gave notice "within the prescribed applicable time limits of its intention not to respond to the Division's technical review decision, and to seek review by the Board of a decision denying the application in part." *Utahamerican Energy, Inc., v. Div'n of Oil, Gas, & Mining*, Stipulation to Stay and Joint Motion to Enter Order Staying Proceedings, Utah Bd. Oil, Gas, & Mining Docket No. 2002-014, Cause No. C/007/013-PM02B (Aug. 27, 2002) (Div'n Ex. 2).
5. After a hearing, the Board entered an Order on October 4, 2002 staying the pending appeals, granting leave for the Southern Utah Wilderness Alliance (SUWA) to intervene in the stayed proceeding, and implementing the terms of the August 27 stipulation. *Utahamerican Energy, Inc., v. Div'n of Oil, Gas, & Mining*, Order Staying Proceedings and Granting Request of Southern Utah Wilderness Alliance to Intervene, Utah Bd. Oil, Gas, & Mining Docket No. 2002-014, Cause No. C/007/013-PM02B (Aug. 27, 2002). (Div'n Ex. 3).
6. Acting pursuant to the Stipulation and Order, UEI submitted a response to the deficiencies on December 6, 2002. The Division's sent its review on April 9, 2003, again with deficiencies. UEI responded more than ten months later on February 26, 2004. Due to the long interval between review and submission of the revised permit, and the fact that there had been more than two years since the last public notice, the Division again required published notice of the application, which occurred on March 26, 2004. SUWA again requested an informal conference, which was held on July 7, 2004. Grubaugh Aff. The Order from this informal

conference was issued on July 30, 2004 and provided that there would be an opportunity for a supplemental meeting of the informal conference when the application was believed to be ready for a final decision. Informal Conference: Findings, Conclusions and Order, Utah Div'n of Oil, Gas & Mining, Cause No. C/007/013 (July 30, 2004) (Div'n Ex. 4).

7. After five further rounds of submissions by UEI and reviews by the Division, the Division issued a Technical Analysis (TA) on the complete application package on September 21, 2005. (Petr.'s Ex. B). Pursuant to the Order from the July 2004 informal conference during this process, the Division circulated the TA to UEI, Emery County, and SUWA for review and comment. An informal conference was held to address issues SUWA raised regarding the TA. The conference closed on November 18, 2005. Grubaugh Aff.
8. Among the issues raised by SUWA at the informal conference was the adequacy of the cultural resource clearance including tribal consultation as required by Section 106 of the National Historic Preservation Act. Grubaugh Aff.
9. The Division consulted with the federal agencies and Utah's State Historic Preservation Officer and concluded that the Technical Analysis did not adequately address protection of cultural resources as required by the NHPA. After further consultation with the federal agencies, the Division was designated by the Office of Surface Mining as the agency official and delegated responsibility for complying with the NHPA clearance process and initiating a process of tribal consultation regarding possible cultural resources within the permit area. E-mail from Pete Rutledge, Chief, Program Support Div'n, Western Region, Office of Surface Mining, to Pamela Grubaugh-Littig, Permitting Supervisor, Utah Div'n of Oil, Gas, & Mining (Jan. 4, 2006) (Div'n Ex. 5).

10. On January 18, 2006, the Division, UEI, and SUWA entered into a Stipulation providing that the requirement of the Coal Act that a decision on a permit must be made within 60 days of the close of an informal conference, would be waived and held in abeyance until the Division had completed the cultural resource clearance as required by the NHPA. Stip. to Amend Order & Amendment to Order, Cause No. C/007/013, Utah Div'n of Oil, Gas & Mining (Jan. 19, 2006) (Div'n Ex. 6). UEI at its initiative hired a consultant and undertook a Class II cultural resources survey of the potential subsidence area. The Division subsequently required UEI to perform a supplemental survey, which was completed in September 2006. Grubaugh Aff.
11. The BLM, Office of Surface Mining, State Historic Preservation Officer, and the Division prepared a Programmatic Agreement (PA) to address how both existing and hereafter-discovered cultural resources would be protected. A PA is one method provided in the Federal rules to address possible discoveries of cultural resources that occur after a permit is issued. UEI elected not to sign onto the PA, though it acknowledged that its terms would be a condition of its permit. Grubaugh Aff.
12. On November 22, 2006 UEI gave notice of intention to file a civil law suit to compel issuance of a permit and purporting to withdraw from its Stipulation of January 19, 2006 waiving the 60 day deadline for a decision on a permit in order to complete the cultural resources clearance. Letter from Denise A. Dragoo, Attorney for UtahAmerican Energy, Inc., to John R. Baza, Director, Utah Div'n of Oil, Gas, & Mining (Nov. 22, 2006) (Petr.'s Ex. D).
13. On January 19, 2007, responding to UEI's concerns expressed to the Governor's Office, and its threat of a civil lawsuit, the Division issued its letter requesting modifications to the

permit package to address remaining deficiencies. The letter provided a short list (List One) of items that must be provided by UEI before a final decision could be reached, and a longer list (List Two) of additional information that would not delay a final decision, but would be conditions of its permit if issued. Letter from John R. Baza to Jay Marshall, Resident Agent, UtahAmerican Energy, Inc. (Jan. 19, 2007) (Petr.'s Ex. E).

14. Since January 19, 2007, and up to the present time, UEI has continued to respond with the requested information and to demand a final decision on its permit. Grubaugh Aff.

### **ARGUMENT**

The Division has separately moved that the subject petition be denied. The Division believes that the Board should not consider the merits of UEI's petition because it was untimely filed and contrary to a previous Stipulation and Board Order. This memorandum, however, addresses the merits of UEI's claims.

UEI advances two arguments in its petition for relief from the Division's January 19, 2007 Decision requesting modification of the permit application: First, that the modification request exceeds the scope of the Board's 2001 order denying its permit and remanding to the Division; and second, that the Decision exceeds the scope of Utah's Coal Mining and Reclamation Act (the Coal Act). The Division addresses these arguments in reverse order in the following paragraphs.

- I. Because Information in the Permit Application was Missing, Incomplete, or Inaccurate, the Application Could not be Approved and a Request for Modification was Appropriate.

The Division maintains, first, that a request for modification was the appropriate action to take when its review found the permit application package to be inadequate, and UEI asserted its demand for a decision; and second, that UEI obtained no vested right to permit approval when



the Division circulated a Technical Analysis in 2005. The following sections explain these arguments.

a. The Request for Modification was Consistent with the Utah Coal Act and the Board's Rules Implementing the Act.

The Board has delegated to the Division its authority to decide whether a coal mining permit application should be approved or denied. Utah Admin. Code R645-300-112.100 (2006). The Division may not approve an application unless “the application affirmatively demonstrates, and the division finds in writing on the basis of the information set forth in the application” that all criteria for approval are met, and the information is accurate and complete. Utah Code Ann. § 40-10-11(2) (West 2004). The applicant has the burden of establishing that its application complies with “all requirements of the State Program.” Utah Admin. Code R645-300-131.200. In carrying out its duty to review a permit application, the Division is permitted to “requir[e] modification of” a permit application as an alternative to denying it if the application package does not affirmatively establish a required element for approval. *Id.* at R645-300-131.100.

Prior to a final decision on application approval, any interested person may request that the Division convene an “informal conference” to consider objections to the proposed permit. Utah Code Ann. § 40-10-13(2); Utah Admin. Code R645-300-123.100 to 123.400. While the Board has specified time limits for the Division’s review of an application, time consumed in obtaining the operator’s response to modification requests, or spent in informal conference, is not counted against the limit. R645-300-131.120. For a new underground mine application, the Division’s review time, less conferences and operator response, should not exceed one year. R645-300-131.113.

The January 19, 2007 Decision arose from the urgent desire, expressed directly by UEI to the Division and also through political channels, to have a decision on the permit application. A status review by Division staff identified a number of data deficiencies and inconsistencies still outstanding in the application. To identify whether these any of these problems could be resolved after approval, staff made the further determination of whether the deficiencies were of “baseline” data that would preclude approval (List 1), or of operational data that could be included as a condition of the permit and completed after approval (List 2), or of items that would require updating and confirmation after application approval but before ultimate permit issuance (List 3). Based on this analysis, the Division determined that the application could not be approved, and issued its request for modification including the three lists advising UEI of the deficiencies.

The Division’s January 19, 2007 Decision to Require Modification of the Application was one of two permissible agency actions available in this circumstance—the other being a permit denial. The January 19 letter advised that when “List 1 and List 3 are satisfied, the Division could issue a conditional permit approval predicated on timely receipt of the remaining items from List 2.” There were six List 1 items: A requirement for the applicant’s complete ownership and control information, a requirement for proof of compliance with the National Historic Preservation Act, and four requirements related to baseline hydrologic data.<sup>1</sup> Each of these items, according to the Coal Act, relate to mandatory findings of fact that must precede approval of the application. Because there were missing or incorrect baseline items, the Division

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<sup>1</sup> The Division believes that List 1, compiled five years after a remand for insufficient baseline hydrologic data, illustrates the difficulty in obtaining needed information from this applicant. Of the six outstanding List 1 issues, four were baseline hydrology issues that the Board found lacking in 2001.

was prohibited by the Coal Act from approving the application, and the Decision to require modification was a correct agency action under the circumstances.

b. The Division's September 2005 Technical Analysis Did Not Obligate the Division to Approve the Application.

UEI incorrectly asserts that when the Division completes a technical analysis document (TA) incorporating affirmative written findings of fact from its review of the application, it must proceed to issue the permit. UEI offers no legal authority for this position, and the relevant statutory provision does not support it. The Coal Act states the Division's obligation as a negative one: that it *may not* approve an application unless all criteria have been met. Utah Code Ann. § 40-10-11(2). It is improper to assume that when the Legislature expressed one thing, that it also intended its logical inverse. *See C.T. ex rel Taylor v. Johnson*, 977 P.2d 479, 481 (Utah 1999) (“[C]ourts are not to infer substantive terms into the text that are not already there. Rather, the interpretation must be based on the language used, and the court has no power to rewrite the statute to conform to an intention not expressed”); *see also Cardon v. Testout Corp.*, No. 2:04-CV-00873, 2006 WL 722208, at \*7–8 (D.Utah 2006) (refusing to infer that a Utah statutory provision also intended its logical inverse.)

UEI's claim that the Division was bound to approve the application when the Division (according to UEI) concluded in September 2005 that technical analysis was complete presents the logical inverse of the statutory language, which forbids approval when the analysis is not complete. UEI offers no other statute or rule that supports its purported “ministerial duty” to approve at any time when a TA appears to be complete. The TA circulated to parties to the informal conference was not “final,” and the Division had ordered at the close of the previous informal conference that it would again convene the conference when the anticipated technical

analysis was written. The time for appeal of that informal conference decision has long passed. All parties to the conference were aware that, while styled as a final document, the September 2005 Technical Analysis was issued in anticipation of further review and comment. Therefore, because the Division was not obliged to approve the application when it prepared its technical analysis in 2005, and because its prior informal conference order provided for further review after the document was circulated, UEI was not entitled to approval of its application in September of 2005.

II. The Board's December 2001 Decision and Remand Order Denying the Permit Does not Prohibit Consideration of Cultural Resources Issues, nor Does it Limit the Present Technical Review to the Deficiencies it Identified.

The Division believes that its obligation after the Board's 2001 remand order was to assure full compliance with the Coal Act, the Board's rules, and applicable federal law. The following sections explain, first, that a cultural resource assessment and tribal consultation were necessary elements of its review, and within the Division's authority; and second, that the Board's Order denying the permit and remanding to the Division expected and required a complete application review with new fact finding rather than a limited consideration of the reasons stated for permit denial.

a. The Division Properly Required a Cultural Resource Assessment of the Permit Area that included Tribal Consultation and a Programmatic Agreement Regarding Possible Future Archaeological Discoveries.

The National Historic Preservation Act (NHPA) requires that any Federal agency with "direct or indirect jurisdiction" over a proposed "Federal or federally assisted undertaking" must take into account the effect of the proposed action on any building, object, or site that is eligible for, or listed on, the National Register of Historic Places. 16 U.S.C.A. § 470f (2000). This

Board's rules require that an applicant for a coal mining permit map and describe known cultural resources within and adjacent to its permit area. Utah Admin. Code R645-301-411.140. State coal regulatory programs are required to provide for coordination with applicable requirements of NHPA, as well as other federal conservation statutes. 30 C.F.R. § 773.5 (2006). A mining permit issued under a state regulatory program that receives federal funding is a federal undertaking triggering NHPA responsibility. *Indiana Coal Council, Inc. v. Lujan*, 774 F. Supp. 1385, 1400–1403 (D.D.C. 1991).<sup>2</sup>

The rules adopted by the Office of Surface Mining require that the information-gathering and analysis functions under NHPA be completed during the state's review of the application package. 30 C.F.R. § 783.12(b). The description of cultural resources in a complete application must be based on consultation with historical and cultural groups. *Id.* at § 783.12(b)(1). The Division, as the regulatory authority, may require collection of information and field investigations, *id.* at § 783.12(b)(2), and may also require protection of Register-eligible places "through appropriate mitigation measures." 30 C.F.R. § 784.17(b).

In addition, Federal rules promulgated under the authority of NHPA impose data collection and analysis requirements. The rules, first, allow a federal agency to delegate its

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<sup>2</sup> In a suit brought by the National Mining Association, a Federal appeals court invalidated NHPA rules promulgated by the Advisory Council on Historic Preservation (ACHP) because they defined a federal undertaking to include federal programs delegated to states even when the program was not federally-funded or licensed. *Nat'l Mining Ass'n v. Fowler*, 324 F.3d 752, 758–60 (D.C. Cir. 2003). Responding, the ACHP revised its definition to a form similar to that approved earlier in *Indiana Coal Council*. See Protection of Historic Properties: Final Rule, 69 Fed. Reg. 40,544 (July 6, 2004); compare 36 C.F.R. 800.16(y) (2006) with *Indiana Coal Council*, 774 F. Supp. at 1388. Utah's State Regulatory Program is a Federal undertaking because it implements a federal mandate and is federally funded by the Office of Surface Mining. See 30 C.F.R. § 944.30, art. V (B). Therefore, the *National Mining Ass'n* case is inapplicable to Utah's program or UEI's permit. In a sense, whether the Division's or the OSM's permitting action is the relevant "federal undertaking" triggering NHPA compliance is a distinction without a difference, because the Division's program may be no less stringent than the same program if administered by OSM, and OSM is undeniably responsible for NHPA compliance.

authority to obtain compliance to a state official if the delegation is otherwise permissible under the federal program. 36 C.F.R. § 800.2(a). The responsible agency must make a good-faith effort, reasonable under the circumstances, to identify cultural resources that might be present in an area affected by its action. See 36 C.F.R. § 800.4(b). The agency has discretion to decide the level of effort it will require to identify resources, based on available information, and may implement a Programmatic Agreement to preserve resources its initial survey might miss, but which later become apparent, or further protect known resources that become threatened by changes in operations or unforeseen conditions. *Id.* at §§ 800.4(b)(1); 800.13(a)(1); *see S. Utah Wilderness Alliance v. Norton*, 326 F. Supp.2d 102, 109–15 (D.D.C. 2004) (describing the resource survey process, and evaluating the sufficiency of the Bureau of Land Management’s efforts to identify resources on a tract near UEI’s permit area); *Indiana Coal Council*, 774 F. Supp. at 1389 (describing use of Programmatic Agreements).

Tribal consultation is a mandatory part of compliance with NHPA. 36 C.F.R. § 800.2(c)(2)(i) (“[T]he act requires the agency official to consult with any Indian tribe . . . that attaches religious and cultural significance to historic properties that may be affected by an undertaking”). Consultation with the State Historic Preservation Officer (SHPO) is also required. *Id.* at § 800.2(c)(1). These parties must be involved in findings and decisions made in the course of fulfilling the Division’s NHPA responsibility, *Id.* at § 800.2(a)(4), and are proper signatories to any Programmatic Agreement. *Id.* at § 800.14(b)(2)(i),(iii). Other parties with a demonstrated interest may also participate, *id.* at 800.2(c)(5), and opportunities for public input are mandatory. *Id.* at 800.2(d).

On January 4, 2006, OSM explicitly delegated its authority to the Division to act as an agency official under NHPA. E-mail from Pete Rutledge, Office of Surface Mining, to Pamela Grubaugh-Littig, Utah Div'n of Oil, Gas, & Mining (Jan. 4, 2006); *see* 30 C.F.R. § 944 art. VI(B) (providing that OSM's responsibility for complying with federal laws may be delegated to the Division). UEI then obtained a Class II cultural resource survey, which identified sites of interest. The Division initiated consultation with Indian Tribes and the State Historic Preservation Officer. Based on the survey and consultations, a draft Programmatic Agreement has been prepared, which will be a condition of UEI's permit, if approved.

The Division's actions are in compliance with applicable federal rules, and were properly taken under its delegated authority. UEI has identified no authority for its challenge to the Division's compliance with the NHPA. While UEI alleges that one Bureau of Land Management official believes that no NHPA consultation is required unless the Secretary of the Interior approves a new mining plan,<sup>3</sup> the Division is proceeding under the authority and rules governing its delegation of the permanent coal regulatory program from the Office of Surface Mining, and not the BLM. While there may not be a new BLM federal undertaking until a new mining plan is presented, the Division properly required resource surveys and engaged in consultation based on its federal funding and delegated regulatory responsibility from OSM. Perhaps the Division could have waited until the federal decision on the approved permit application indisputably triggered NHPA compliance, but that compliance could not proceed without the information and

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<sup>3</sup> The Mining Plan requiring Secretarial approval is distinct from the Division's approval of the permit application. The Mining Plan is a document required by the Mineral Leasing Act of 1920 when Federal Coal leases are involved, and describes how the federally-leased coal will be recovered. *See* 30 U.S.C.A. §§ 207(c), 740(a)(1); 30 C.F.R. §§ 746.1-746.16; Federal Lands Program: Final Rule, 48 Fed. Reg. 6912 (Feb. 16, 1983) ("Mining Plan" would mean the plan for mining leased Federal Coal required by the Mineral Leasing Act").

analysis gathered during the Division's review. Waiting for the federal decision to trigger NHPA, then, would have lengthened the timeline for ultimate permitting.

b. The Division Properly Required Compliance with All of the Coal Act's Approval Criteria, even though it Was Making its Determination Subject to the Board's Remand Order.

As already noted, the Division is forbidden by the Coal Act from approving a permit application unless the application affirmatively demonstrates, and the Division finds in writing, that every applicable criterion for approval has been satisfied, and all information is accurate and complete. Utah Code Ann. § 40-10-11(2). The Coal Act provides no authority for the Board, in a remand order or otherwise, to waive any approval criterion or required submission. When the Board considers an appeal of the Division's decision on a permit application, it must issue a written decision "granting or denying the permit in whole or in part and stating the reasons." *Id.* at § 40-10-14(3).

While there is no specific case law defining the scope of subordinate agency's action when a matter is remanded to it after appeal to a higher administrative board, general remand principles from judicial proceedings provide some guidance:

"[A] trial court taking a case on remand may generally consider or decide any matter left open by the remanding appellate court. Moreover, a court on remand . . . is ordinarily free to make an order or direction on questions not presented or settled by the appellate court which is not inconsistent with the appellate court's opinion."

5 Am. Jur. 2d *Appellate Review* § 792 (updated Jan. 2007). A remand for further development of factual issues, therefore, does not prevent a lower court from deciding the case on any appropriate ground, so long as the specified issues are addressed. *Rocky Mountain Thrift Stores, Inc. v. Salt Lake City Corp.*, 887 P.2d 848, 850-51 (Utah 1994). Even if a remand is limited in scope, the lower court has a "reasonable amount" of discretion in determining the course of the



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proceeding. 5 Am. Jur. 2d *Appellate Review* § 786. Where, similar to this case, an order of the appellate court reverses and sets aside the lower decision, with instructions for further proceedings, the appellate decision cannot be construed as partially affirming the lower decision. *Madsen v. Madsen*, 1 P.2d 946 (Utah 1931); *see also Dunlap v. Stichting Mayflower Mtn. Fonds*, 119 P.3d 302, 304–05 (Utah Ct. App. 2005) (noting that the scope of a lower court proceeding on remand is not necessarily limited to the issues raised on appeal).

UEI's position, that the Board granted the permit application in part, while remanding for the Division to revisit only ten specific items, is inconsistent with the terms of the Board's order. The Board fully reversed the Division's approval of the application and denied the permit in unequivocal language, without exercising its authority to either grant or deny in part: "Therefore, based on the record before the Board, the Division's decision to issue the permit of July 27, 2001 is reversed and the permit is denied." *S. Utah Wilderness Alliance v. Div'n of Oil, Gas, & Mining*, Findings of Fact, Conclusions of Law and Order 20, Utah Bd. Oil, Gas, & Mining Docket No. 2001-027, Cause No. C/007/013-SR98(1) (Dec. 14, 2001). The Board's entire instruction to the Division on remand is the single sentence that follows: "This matter is remanded to the Division for further action consistent with this Order." *Id.*

The Board's treatment of individual issues raised on appeal indicates that its remand for ten specific deficiencies did not affirm the Division's decision on issues not reached by the Board. For example, the Board did not reach SUWA's claim that the permit was "improvidently issued" because it was remanding the decision anyway. *Id.* at 15. The Order states earlier that the Division's approval of the application was "set aside" because of the deficiencies in hydrologic and geologic information. *Id.* at 8. Of the issues raised by SUWA in appealing the approval, the

Board ruled against SUWA on four issues: Improvidently granting the permit, rights of way, wilderness, and post-mining land use. *Id.* It declined to rule on one issue, and ruled in SUWA's favor on eleven others. *Id.* The Board left 25 issues unaddressed. *S. Utah Wilderness Alliance v. Div'n of Oil, Gas, & Mining*, Division's Response to Board's Order on Remand, and Petition for Rehearing 7 n. 11, Utah Bd. Oil, Gas, & Mining Docket No. 2001-027, Cause No. C/007/013-SR98(1) (Jan. 10, 2002). The Board's choice not to decide all the issues is inconsistent with any of its statutory options except a full denial and remand for a new review.

The Board denied subsequent requests for reconsideration filed, in part, to gain clarification on the issues not addressed. *S. Utah Wilderness Alliance v. Div'n of Oil, Gas, & Mining*, Hrg. Tr. 3:20–5:9, Utah Bd. Oil, Gas, & Mining Docket No. 2001-027, Cause No. C/007/013-SR98(1) (Jan. 23, 2002). The motion approved by the Board in denying the requests “clarif[ied] that the matter is back before the Division.” *Id.* at 3:21–3:23. The sole Board member to object to that motion did so on the grounds that, in his opinion, only “selected issues” should have been remanded to avoid the burden of a complete new review of the permit. *Id.* at 4:8–4:25. This objection makes little sense if, as UEI claims, the Board had in fact limited the scope of the subsequent Division review.

Finally, the subsequent actions of the parties confirm that the Division's review was a new and complete technical review, and not a mere “repair” of the previous decision. The Division understood that it was to do a new review, and in all requests to UEI for information supporting that review, UEI never objected to subject matter as being outside the Division's scope. Grubaugh Aff. ¶¶ 14,15,18,19. The only conclusion consistent with the Board's Order and its decision to deny reconsideration is that it deemed the permit unapprovable because of at

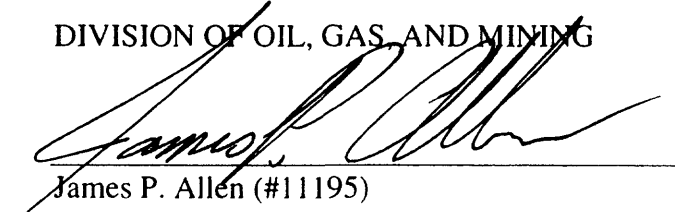
least ten deficiencies, declined to rule on other possible deficiencies, and required the Division to repeat its review.

### CONCLUSION

Through the long course of UEI's permit application, the Division has complied with the Utah Coal Act, and has conducted its review according to rules promulgated by this Board, and by the responsible Federal agencies. Whether on initial review or after remand, the Coal Act expressly forbids approval of an application when there is missing or incomplete information, or where the application does not affirmatively demonstrate that all criteria for approval are met. Undeniably, the Division has made course corrections since the Board's previous Order, and has revisited issues in order to fulfill its obligation. It is also true, however, that much time has been lost while UEI failed to provide needed information, or provided information of unreliable quality. The Division has properly refused to approve the application based on that information.

Respectfully submitted this 10<sup>th</sup> day of April, 2007.

DIVISION OF OIL, GAS, AND MINING



James P. Allen (#11195)  
Steven F. Alder (#0035)  
Assistant Attorneys General

## CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing DIVISION'S RESPONSE TO UTAHAMERICAN ENERGY'S PETITION FOR REVIEW OF THE DIVISION'S JANUARY 19, 2007 DECISION, via United States mail, postage prepaid, to the following:

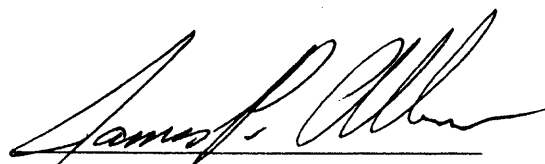
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4/11/07

copy to MAW  
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DWH**FILED****APR 10 2007****SECRETARY, BOARD OF  
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**BEFORE THE BOARD OF OIL, GAS, AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH**

In the Matter of the Request for Agency  
Action by

UTAHAMERICAN ENERGY INC.,

Petitioner,

For Review of the Division's  
January 19, 2007 Decision

**MEMORANDUM IN SUPPORT OF  
MOTION TO DISMISS  
THE PETITION**

Cause No. C/007/013-SR-98(1)-A

Docket No. 2007-008

The Utah Division of Oil, Gas, and Mining (Division) submits this memorandum in support of its motion to dismiss the petition of UtahAmerican Energy, Inc., (Petitioner) for Review of the Division's January 19, 2007 Decision Requiring Modification of its Mining and Reclamation Plan. Under the limitations for review of Division actions as set forth in the Coal Mining Reclamation Act, Utah Code Ann. § 40-10-1 et seq. (West 2004), the rules adopted by this Board pursuant to that Act, Utah Administrative Code R644-100 et seq. (2006), and the Utah Administrative Procedures Act, Utah Code Ann. § 63-46b-1 et seq., the Board lacks jurisdiction to grant Petitioner's request because it was filed more than 30 days after the Decision to be reviewed. Moreover, this request for review is foreclosed by the Board's Order of October 4,

2002 entered pursuant to the Stipulation of Petitioner and the Division staying proceedings and deferring review until the Division reaches a final decision on the permit package, or Petitioner serves appropriate notice of its intent not to respond to further technical review actions.

### STATEMENT OF FACTS

The Division believes that the statement of facts submitted by petitioner presents an incomplete picture of the continuing review process. Specifically, the statement fails to acknowledge UEI's own role in the delays that occurred throughout the process, or how its failure to timely provide necessary information resulted in the cycle of deficiencies and submissions.

1. On December 14, 2001 the Board issued an Order remanding Petitioner's permit application to the Division for further action.<sup>1</sup> *S. Utah Wilderness Alliance v. Div'n of Oil, Gas, & Mining*, Utah Bd. Oil, Gas, & Mining Docket No. 2001-027, Cause No. C/007/013-SR98(1) (Dec. 14, 2001) (Petr.'s Ex. A).
2. On February 11, 2002 UEI submitted a new application. The Division reviewed the information submitted, requested additional information, reviewed that information, determined that the application was administratively complete, advertised notice of the application, and based on a request from the Southern Utah Wilderness Alliance (SUWA)

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<sup>1</sup> The Findings of Fact, Conclusions of Law and Order were provided as Petitioner's Exhibit A. Petitioner argues that the remand was limited to "ten specific geological and hydrological deficiencies and the failure to disclose in the record the qualifications of personnel conducting biological surveys" (Pet. at 3). The Division believes the Order of remand was not limited to specific items, and was not understood or treated by UEI or Division as a limited remand in the subsequent the application and review process. Since the nature of the remand is not critical to this Motion to Dismiss the issue is not addressed here and is addressed more fully in the Division's response to UEI's Petition.

held an informal conference on May 21, 2002. Affidavit of Pamela Grubaugh-Littig, April 10, 2007 [hereinafter "Grubaugh Aff."] (Exhibit 1 to this memorandum).

3. The Division issued a decision on July 19, 2002 partially denying the application. UEI and SUWA each sought Board review of this decision. Grubaugh Aff.
4. On August 27, 2002, Petitioner and the Division entered into a "Stipulation and Joint Motion to Stay Proceedings on Appeal" agreeing to withhold appeals from the Division's subsequent technical review decisions regarding UEI's permit application until the Division issued a "final decision to grant or deny UEI's permit application package", or until UEI gave notice "within the prescribed applicable time limits of its intention not to respond to the Division's technical review decision, and to seek review by the Board of a decision denying the application in part." *Utahamerican Energy, Inc., v. Div'n of Oil, Gas, & Mining*, Stipulation to Stay and Joint Motion to Enter Order Staying Proceedings, Utah Bd. Oil, Gas, & Mining Docket No. 2002-014, Cause No. C/007/013-PM02B (Aug. 27, 2002) (Ex. 2).
5. After a hearing, the Board entered an Order on October 4, 2002 staying the pending appeals, granting leave for the Southern Utah Wilderness Alliance (SUWA) to intervene in the stayed proceeding, and implementing the terms of the August 27 Stipulation. *Utahamerican Energy, Inc., v. Div'n of Oil, Gas, & Mining*, Order Staying Proceedings and Granting Request of Southern Utah Wilderness Alliance to Intervene, Utah Bd. Oil, Gas, & Mining Docket No. 2002-014, Cause No. C/007/013-PM02B (Aug. 27, 2002). (Ex. 3).
6. Acting pursuant to the Stipulation and Order, UEI submitted a response to the deficiencies on December 6, 2002. The Division's sent its review on April 9, 2003; again with deficiencies. UEI responded more than ten months later on February 26, 2004. Due to the long interval

between review and submission of the revised permit, and the fact that there had been more than two years since the last public notice, the Division again published notice of the application on March 26, 2004. SUWA again requested an informal conference, which was held on July 7, 2004. Grubaugh Aff. The Order from this informal conference was issued on July 30, 2004 and provided that there would be an opportunity for a supplemental meeting of the informal conference when the application was believed to be ready for a final decision.

Informal Conference: Findings, Conclusions and Order, Utah Div'n of Oil, Gas & Mining, Cause No. C/007/013 (July 30, 2004) (Ex. 4).

7. After five further rounds of submissions by UEI and reviews by the Division, the Division issued a Technical Analysis on the complete application package on September 21, 2005. (Petr.'s Ex. B). Pursuant to the Order from the July 2004 informal conference during this process, the Division provided notice of the Technical Analysis to UEI, Emery County, and SUWA. An informal conference was held to address issues SUWA raised regarding the Technical Analysis. The conference closed on November 18, 2005. Grubaugh Aff.
8. Among the issues raised by SUWA at the November informal conference was the adequacy of the cultural resource clearance as required by the National Historic Preservation Act including tribal consultation. Grubaugh Aff.
9. The Division consulted with the federal agencies and Utah's State Historic Preservation Officer and concluded that the Technical Analysis did not adequately address protection of cultural resources as required by the National Historic Preservation Act. Grubaugh Aff. After further consultation with the federal agencies, the Division was designated by the Office of Surface Mining as the agency official and delegated responsibility for complying with the



NHPA clearance process and initiating a process of tribal consultation regarding possible cultural resources within the permit area. E-mail from Pete Ruteledge, Chief, Program Support Div'n, Western Region, Office of Surface Mining, to Pamela Grubaugh-Littig, Permitting Supervisor, Utah Div'n of Oil, Gas, & Mining (Jan. 4, 2006) (ex. 5).

10. On January 18, 2006, the Division, UEI, and SUWA entered into a Stipulation providing that the requirement of the Coal Act that a decision on a permit must be made within 60 days of the close of an informal conference would be waived and held in abeyance until the Division had completed the cultural resource clearance as required by the NHPA. Stip. to Amend Order & Amendment to Order, Cause No. C/007/013, Utah Div'n of Oil, Gas & Mining (Jan. 19, 2006) (Ex. 6). UEI at its initiative hired a consultant and undertook a Class II cultural resources survey of the potential subsidence area. The Division subsequently required UEI to perform a supplemental survey, which was completed in September 2006. Grubaugh Aff.
11. The BLM, Office of Surface Mining, State Historic Preservation Officer, and the Division prepared a Programmatic Agreement (PA) to address how both existing and hereafter-discovered cultural resources would be protected. A PA is one method provided in the Federal rules to address possible discoveries of cultural resources that occur after a permit is issued. UEI elected not to sign onto the PA, though it acknowledged that its terms would be a condition of its permit. Grubaugh Aff.
12. On November 22, 2006 UEI gave notice of intention to file a civil law suit to compel issuance of a permit and purporting to withdraw from its Stipulation of January 19, 2006 waiving the 60 day deadline for a decision on a permit in order to complete the cultural

resources clearance. Letter from Denise A. Dragoo, Attorney for UtahAmerican Energy, Inc., to John R. Baza, Director, Utah Div'n of Oil, Gas, & Mining (Nov. 22, 2006) (Petr.'s Ex. D).

13. On January 19, 2007, responding to UEI's concerns expressed to the Governor's Office, and its threat of a civil lawsuit, the Division issued its letter requesting modifications to the permit package to address remaining deficiencies. The letter provided a short list (List One) of baseline data needs that must be provided by UEI before the application could be approved, a longer list (List Two) of additional information that would not delay approval, but would be conditions of its permit if issued, and a courtesy list (List Three) of items that UEI must provide after approval of its application, but before a permit could be issued. Letter from John R. Baza to Jay Marshall, Resident Agent, UtahAmerican Energy, Inc. (Jan. 19, 2007) (Petr.'s Ex. E).
14. Since January 19, 2007, and up to the present time, UEI has continued to respond with the requested information and to demand a final decision on its permit. Grubaugh Aff.

## **ARGUMENT**

### **I. Because UEI Filed its Petition to Review the Division's Decision More than 30 Days after the Decision was Issued, the Board Lacks Jurisdiction to Review the Decision and the Petition Must Be Dismissed.**

When review of an agency's adjudication by a superior Board or agency is provided by rule or statute, a party entitled to review must seek it within 30 days after the order is issued.

Utah Code Ann. § 63-46b-12(1)(a) (2004). In addition this Board's administrative rules governing issuance of coal mine permits provide a 30-day limit in which to seek review of the Division's determinations made in connection with coal mine permit application . Utah Admin.

Code R645-300-211(2006). Unless a petitioner shows good cause, the Board's jurisdiction to hear an appeal expires after 30 days and the decision becomes the final agency action on the matter. *See Varian-Eimac v. Lamoreaux*, 767 P.2d 569, 570 (Utah Ct. App. 1989) (noting that the jurisdiction of statutory tribunals is limited by the terms of the relevant statute, including time limits contained therein); see also 2 Am. Jur. 2d *Administrative Law & Procedure* § 364 (current through May 2006) ("Appeal periods, even at the administrative level, are jurisdictional and may not be extended except for good cause shown. The failure to timely petition for a hearing constitutes a waiver of any right to administrative review").

In this matter, the Division issued its Decision on January 19, 2007 in a letter from Division Director John Baza to the Petitioner. Petitioner did not file its request for review of that decision until March 12, 2007, some 52 days later. The petition does not state the reason for delay, nor does it allege that any good cause exists for the Board to accept the late filing. Therefore, the Board is without jurisdiction to grant the relief requested in the petition, and the Division's Order of January 19 returning the permit application for further modification stands as a final agency action on the matter. This is not to say that the Petitioner is deprived of Board review of the Division's ultimate decision on the permit, but only that an appeal of the January 19, 2007 Decision requiring further modification before that ultimate decision could be reached was not timely filed and the Board does not have jurisdiction to consider UEI's complaints regarding that decision.

## II. UEI is Barred by the Prior Stipulation and Order of the Board from Appealing the January 19, 2007 Order Requiring Modification of its Application.

Stipulations before administrative agencies are as effective as those made in court, and parties to them are bound to the matters contained therein unless excused by the agency. *Yeargin*,

*Inc. v. Auditing Div'n of Utah State Tax Comm'n*, 20 P.3d 287, 292–93 (Utah 2001). “A stipulation of fact filed with and accepted by a court acts as an estoppel upon the parties thereto and is conclusive of all matters necessarily included in the stipulation. Such a stipulation has all the binding effect of findings of fact and conclusions of law made by the court upon the evidence.” *Id.* at 293 (internal citations omitted). Especially when a stipulation is negotiated and entered into with advice of counsel, a court is hesitant to relieve a party from its effect. *Rivera v. State Farm Mut. Auto. Ins. Co.*, 1 P.3d 539, 542 (Utah 2000). It is within a tribunal’s discretion to allow a party to repudiate its stipulation upon a timely motion to that effect combined with a showing that it entered the stipulation inadvertently or for some other “justifiable cause.” *Yeargin, Inc.*, 20 P.3d at 293.

The 2002 stipulation between UEI and the Division provided that “future decisions by the Division in its technical review process of UEI’s permit application” would be withheld until either of two events occurred: “(1) the Division issues a final decision to deny or grant UEI’s permit application package . . . or (2) UEI gives notice within the time limits prescribed of its intention not to respond to the Division’s technical review decision and to seek review by the Board of any decision denying the application in part.” *Utahamerican Energy, Inc., v. Div’n of Oil, Gas, & Mining*, Order Staying Proceedings 2, Utah Bd. Oil, Gas, & Mining Docket No. 2002-014, Cause No. C/007/013-PM02B (Aug. 27, 2002) (Ex. 2). Petitioner’s request is subject to this Stipulation because the Division’s January 19, 2007 decision was made in the course of its technical review. The Stipulation is signed by counsel for UEI and the Division, so the Board may properly be hesitant to relieve UEI from its effect. Neither of the events precedent to seeking review has transpired: (1) The Division has not issued a final decision to issue or deny

the permit, though that decision is imminent; and (2) UEI has not served notice that it intends to abandon the continuing technical review process in order to seek review of any adverse determination made in the course of that review. Accordingly, the 2002 Stipulation and Order preclude UEI from seeking review by the Board at this time.

Prudent, efficient administration of the permitting process supports adherence to this Order staying proceedings until a permit decision is issued or the applicant withdraws from the process. The purposes of the Stipulation were to shield the Board from repetitive board actions contesting individual reviews, and to shield the Division from being placed in the position of simultaneously processing the application and defending its denial. The Stipulation therefore intended to reserve until the conclusion of the permitting process all issues and grounds for appeal, and adjudicate those matters at one time. The Stipulation instituted a sound process that merits respect, and at the very least there should be a motion and good cause shown for termination the Stipulation and Order. Allowing the Petitioner to repudiate its stipulation and bring an appeal while requiring the Division to continue to process the permit amounts to bullying of the Division and improper interference in the independence of its regulatory role. If the Petitioner believes it has satisfied the requirements for a permit it should stand on the submission. If the Division believes more information is required, it should stand on its decision. The terms of the Stipulation should not be modified. The reasoning that led to the agreement still applies, is sound, and should be retained.

Petitioner can claim no prejudice from being held to its Stipulation and the Board's accompanying Order. UEI has always been the master of its fate in this process. If UEI had elected not to respond to a determination that the application was incomplete (e.g., after either

the December 8, 2005 or January 19, 2007 notice) then according to the terms of the Stipulation and Order it was entitled to this Board's review. Instead, UEI chose to respond to both the December 8, 2005 and the January 19, 2007 decisions by making the modifications to the permit as requested by those decisions. According to the Stipulation, UEI could not simultaneously appeal those decisions to the Board and proceed before the Division to modify the application. Even if there were a basis for finding that the Petition in this matter was timely filed, the Board is bound by the parties' Stipulation and its Order to dismiss the petition for review until such time as the Division completes its review, or UEI withdraws from the continuing technical review process in order to seek its remedies before the Board.

### **CONCLUSION**

UEI's Petition asks the Board to turn back the clock to a point in the review process when UEI seems to believe, with the benefit of hindsight, that its burden was lighter and its chances for approval brighter. Even if Utah administrative law permitted such an action, and it was not barred by the parties' Stipulation and the Board's Order, such an action is inappropriate because, simply, the parties have moved on. UEI continues to submit information, the Division continues to evaluate it, and a decision, based on a complete review, is forthcoming. The Board protects no vested right, nor does it facilitate fair and efficient regulation, by granting UEI's petition to constrain the Division's review to the state of the permit process some nineteen months ago.

Because the Board lacks jurisdiction to review the Division's action unless review is sought within 30 days, and because UEI's 2002 stipulation and the Board's resulting Order foreclose review until the technical review process is complete (or UEI withdraws from it), the present petition for review should be dismissed. The Division is conscientiously reviewing

Petitioner's permit application in this matter, with the objective of producing a decision that fully complies with state and federal law. The process is nearly complete. UEI can best assure a timely and satisfactory conclusion to their permit application by constructively participating in the continuing technical review.

Respectfully submitted this 10<sup>th</sup> day of April, 2007.

DIVISION OF OIL, GAS, AND MINING



James P. Allen (#11195)

Steven F. Alder (#0035)

Assistant Attorneys General

## CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing MOTION TO DISMISS, via United States mail, postage prepaid, to the following:

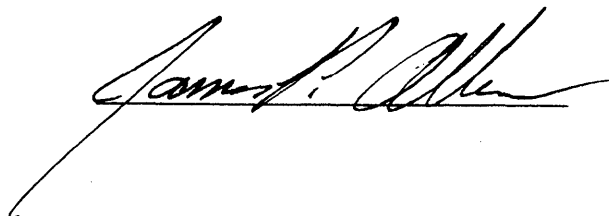
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1594 W. North Temple #300  
Salt Lake City, Utah 84116

A handwritten signature in black ink, appearing to read "James P. Allen", is written over a horizontal line.



## **DIVISION'S EXHIBIT 1**

Steven F. Alder  
James P. Allen  
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Salt Lake City, UT 84116  
*Attorneys for Respondent*  
*Utah Division of Oil, Gas, & Mining*

**BEFORE THE BOARD OF OIL, GAS, AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH**

In the Matter of the Request for Agency  
Action by

UTAHAMERICAN ENERGY INC.,

Petitioner,

For Review of the Division's  
January 19, 2007 Decision

**AFFIDAVIT OF PAMELA  
GRUBAUGH-LITTIG IN SUPPORT OF  
MOTION TO DISMISS  
THE PETITION**

Cause No. C/007/013-SR-98(1)-A

Docket No. 2007-008

STATE OF UTAH                    )  
  ) ss  
COUNTY OF SALT LAKE    )

I, PAMELA GRUBAUGH-LITTIG, being first sworn upon oath do hereby swear  
that I am knowledgeable of the facts set forth herein and do affirm that the same are  
known by me to be true of my own personal knowledge and observation.

1. I am employed by the State of Utah, at the Division of Oil, Gas and Mining as the  
environmental manager of the coal regulatory program.
2. I earned a B.S degree in Mining Engineering from the University of Utah in 1974  
and was employed as a mining engineer for KCC from 1974 until 1982.

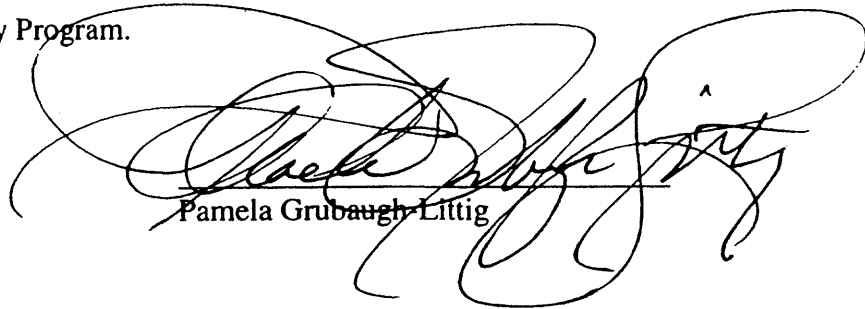
3. I have worked for the Division since 1982 and in the coal program as a reclamation engineer from 1982 to 1989 and as a permitting supervisor in the coal program since 1989.
4. My responsibilities include coordinating the permit submissions and reviews and tracking the activities of the Division staff assigned to review the technical aspects of the permit application.
5. All communications that are received by the Division pertaining to a coal mine application are processed by me in coordination with my program supervisor. I am responsible for directing the information to the appropriate person for review, supervising the review, and designating how communications are to be kept and filed as part of the public record of the permitting communications and process.
6. Among my duties is the responsibility to prepare a quarterly summary of the permitting activities for the coal program referred to as the Coal Regulatory Program Quarterly Report. This document summarizes such permitting activities as permit submissions and responses by the applicant to permit reviews, permit reviews returned to the applicant, and actions taken by the Division on a permit application. Due to my duties in preparing this report I am familiar with the files for the individual permits and review them regularly.
7. I am also am responsible for preparing a Permit Chronology for a permit application that is included as part of the final Division decision document or Permit Application Package (PAP) that is sent to the Secretary of the Interior for action once the state makes its final permit decision.

8. The attached document entitled "Lila Canyon Tract - Horse Canyon Mine (UtahAmerican Energy, Inc.)" is the most recent draft of the Permit Chronology for the Lila Canyon Mine prepared by me in anticipation of the final decision on the application.
9. To my knowledge and ability this chronology fairly and accurately tracks the dates of the application submittals by UtahAmerican Energy Inc. (UEI), the dates of reviews of the submissions, the dates of responses to the review requests, notices of informal conferences, and other notations of Division's actions as a result of the permit application review.
10. I have personally been involved in the coordination of the Lila Canyon permit review process since September 1998, including the delegation of the submittals, communications with the applicant, and distribution of the reviews to the applicant for further action.
11. I was working in this role on the Lila Canyon permit review prior to December 2001 and was involved in coordination of the Division's review process when the Division's decision to grant the permit was appealed to the Board of Oil Gas and Mining (Board) and the permit application was remanded to the Division.
12. In January 2002, the Division petitioned for a rehearing and on January 26, 2002 the Board ordered the Division to continue to process the permit.
13. To my knowledge and based on my experience supervising and coordinating the processing of the application, the Division has proceeded to treat the application as a significant revision of a permit requiring a complete submittal of all required information, the requisite public notices, new determination of administrative

completeness, and a complete finding of technical adequacy without exceptions for any of the prior portions of the permit that were "not remanded".

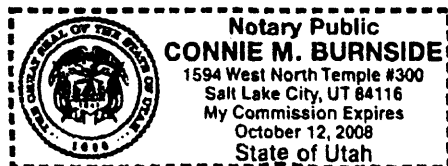
14. There has never been a request by the Division for information required for the permit that was limited to only such portions of the application that might have been remanded by the Board for further review. Rather, it was understood that the entire permit was remanded for further processing.
15. To my knowledge and based on my experience supervising and coordinating the processing of the application there has never been a request for additional information by the Division that was objected to by UEI as being unnecessary because it was an issue or aspect of the permit that was not among those portions of the Division's 2001 decision remanded by the Board's Order. Specifically, UEI never objected to the Division's review or requests as being beyond nine or ten identified parts of the application that had been remanded for further evaluation in 2001.
16. UEI and its consultants were not prompt to reply to the Division's reviews of the application and were not always thorough in making the changes requested. Due to their incomplete responses the Division was often required to make repeated request for modifications involving the same portions of the permit application.
17. Due to the extended delays and excessive amount of time between Division's request for information and the eventual responses by UEI, the Division determined in March 2004 that it was necessary to require publication of a new notice to the public that the application had been submitted and determined complete and provide an opportunity for a further informal conference.

18. UEI did not object at any of the Informal Conferences that the permit review process exceeded the scope of the Board's Remand Order.
19. At all times since the remand by the Board in December 2001, the Division has understood its duty to require a complete resubmittal of the permit application, and to review the entire application for compliance with all aspects of the regulatory program without limitation to any specific items remanded. The Division's reviews have proceeded in conformity with the requirement that the Division staff make a complete review for compliance with all aspects of the Utah Coal Regulatory Program.


  
Pamela Grubaugh-Littig

STATE OF UTAH     )  
                                  ) ss.  
Salt Lake County    )

The Foregoing Affidavit was signed before me this 10 day of April, 2007 by Pamela Grubaugh-Littig a person know to me who did affirm that she was signing of her own free will and that the statements therein were true and accurate of her own knowledge.



My Notary Expires Oct. 12, 2008.

  
NOTARY PUBLIC, residing in  
Salt Lake County, Utah

Lila Canyon Tract - Horse Canyon Mine (UtahAmerican Energy, Inc.)

Utah AmericanEnergy, Inc. acquired the Horse Canyon Mine permit on December 21, 1998. The application for the permit extension to the Horse Canyon Mine was received on September 8, 1998. This application was determined incomplete on November 6, 1998 and returned to the applicant. The applicant resubmitted this application on December 21, 1998. This application was determined administratively complete on February 26, 1999.

A concern letter about loss of surface water was received on March 30, 1999 from Josiah K. Eardley in response to the publication notice. The Division responded in a letter to Mr. Eardley on April 7, 1999 with more information and notified him that he could request an informal conference if need be. No conference was requested.

The technical adequacy of this application involved six rounds of deficiencies from May 27, 1999 to March 9, 2001. Responses were received through May 24, 2001. All findings were made and the revised permit was issued on July 27, 2001. The Mining Plan Approval was signed by the Secretary on November 5, 2001.

Southern Utah Wilderness Alliance (SUWA) filed an objection to the permit on September 4, 2001 with the Board of Oil Gas, and Mining. Determination of the type of hearing and the administrative record was heard during the September 26, 2001 Board hearing and October Board Hearing. It was ordered by the Board that this was an appellate hearing. The merits of the case were heard on December 4, 2001. The Board issued its Order on December 14, 2001 that reversed the Division's decision to issue the permit of July 27, 2001 and the permit was denied.

The Division responded to the Board's remand Order and submitted to the Board on January 10, 2002 a request for rehearing and a response to the Board Order. At the January 23, 2002 Board Hearing, the Board ordered the Division to "continue processing the permit". UEI submitted an application on February 11, 2002 with supplemental information on February 19, 2002. The Division determined the new permit application administratively complete on February 25, 2002. Technical deficiencies were sent on March 26, 2002, with a response due on April 30, 2002. The public comment period ended April 22, 2002.

SUWA requested an informal hearing on March 22, 2002, but withdrew. SUWA resubmitted a request for a hearing at the end of the public comment period, April 22, 2002. An informal hearing was held on May 21, 2002. The Order from the Hearing stated that the Division would consider the materials submitted at the informal conference during the normal course of its ongoing review of the new permit and that the Division would issue a decision to grant or deny the permit application in whole or part and provide its reason for the decision by July 22, 2002. The Division met informally with UEI on June 17, 2002 to discuss its ongoing review of the new permit application.

The Division sent the decision that the application was denied in part on July 22,

2002. UEI filed a motion with the Board, and SUWA subsequently filed the same motion, to maintain their right to appeal the Division's decision, when appropriate. The Board decided at the September 2002 Board hearing to maintain both appeal rights for SUWA and UEI when the Division makes a final decision on the permit extension application (Lila Canyon) to the Horse Canyon Mine.

UEI submitted a response to the deficiencies on December 6, 2002. The review was sent on April 9, 2003 with deficiencies. The applicant was advised that the application must again respond to all of the deficiencies completely and adequately in the next response.

The response was received on February 26, 2004 and was reaffirmed to be administratively complete on March 26, 2004. The application was published and the publication ended on May 27, 2004. SUWA requested an informal conference, which was held on July 7, 2004. The Order from this informal conference was issued on July 30, 2004.

The technical review was sent on November 30, 2004 and did not incorporate the comments from the informal conference but did encourage the application to address issues identified during the informal conference.

UEI submitted a response to deficiencies on February 28, 2005. On March 30, 2005 UEI submitted a response to comments from SUWA concerning the Lila Canyon Mine.

The Division sent their review on May 23, 2005 and UEI responded on June 15, 2005. A deficiency review was sent to UEI on August 19, 2005. The Division and UEI met on August 23, 24, and 25 to resolve outstanding deficiency issues.

Due to the order from the July 2004 Informal Conference, the Division sent the Technical Analysis to UEI, Emery County and SUWA on September 21. SUWA requested a continuation of the informal conference and this conference was held on November 8, 2005 and this conference officially closed on November 18, 2005.

A meeting was held with SUWA on December 8, 2005 and with UEI on December 20, 2005. UEI submitted more information on December 9, 2005 and January 3, January 9, January 20, January 30, February 3, and February 14, 2006. The Division sent an additional clarification letter to November 27, 2006. UEI responded on December 1, 2006. This response is under review and will respond by January 22, 2007.

#### Resource Recovery and Protection Plan

On January 19, 2006, the Division notified UEI that the approved R2P2 for the Lila Canyon extension (approved by BLM in March 2000) included mining in an area that was removed from the permit area sometime in 2002. This situation was rectified by UEI and the permit area remained the same and the R2P2 was modified.



## Section 106

The Environmental Assessment for this project done by the BLM (Record of Decision on October 26, 2001) did not include consultation with Native Americans. This Section 106 process is underway. Letters of request from the Division for information and consultation to Native American tribes, local governments, SUWA (as a consulting party) and UEI were sent on January 13, 2006. SUWA sent a concern letter about consultation which was received on February 14, 2006. Clarification letters were sent to all consulting parties on March 13, 2006 as supplemental information about the area of potential effect for the project. SUWA and the Hopi tribes sent concern letters on March 27, 2006.

OSM/DOGM and UEI met on May 9, 2006 about more cultural resource work. UEI submitted a proposal on May 16, 2006 and on their own volition chose to have the archeological consultants start on May 22, 2006. SUWA/Hopi/SHPO and OSM commented on the May 16, 2006 proposal and these comments, requiring more work were forwarded to UEI. UEI sent the results of the original proposed work to the Division on June 21, 2006.

The Division required UEI to do a supplemental survey, which was completed in September 2006. A Programmatic Agreement and Memorandum of Agreement are being prepared as well as the concurrence letter for SHPO.

## GRAMA Issues

SUWA sent a GRAMA request to the Division on May 31, 2006 and the Division prepared the documents within the requisite time frame. SUWA appealed the Division's request for payment and a hearing was held before the State Records Committee on October 12, 2006 and the Order was signed by the State Records Committee on October 18, 2006. This Order denied SUWA a waiver of fees and affirmed the determination by the Division for actual cost of staff time for summarizing, compiling, search, retrieval and other direct administrative costs for complying with SUWA's request.

It was verified on an interagency call on January 6, 2006 that the EA for this project analyzed the entire project area (5500 acres).

P:\GROUPS\COAL\WP\007013.HOR\chronology\Lila Canyon Tract chronology.doc

## **DIVISION'S EXHIBIT 2**

**FILED**

**AUG 27 2002**

**SECRETARY, BOARD OF  
OIL, GAS & MINING**

Denise A. Dragoo (0908)  
Wade R. Budge (8482)  
SNELL & WILMER L.L.P.  
15 West South Temple, Suite 1200  
Salt Lake City, Utah 84101  
Telephone: 801-257-1900  
Facsimile: 801-257-1800

*Attorneys for UtahAmerican Energy, Inc.*

**BEFORE THE BOARD OF OIL, GAS, AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH**

UTAHAMERICAN ENERGY, INC.,

Petitioner,

v.

DIVISION OF OIL, GAS, & MINING,  
DEPARTMENT OF NATURAL  
RESOURCES, STATE OF UTAH,

Respondent.

**STIPULATION TO STAY AND JOINT  
MOTION TO ENTER ORDER STAYING  
PROCEEDINGS**

Docket No. 2002-014

Cause No. C/007/013-PM02B

Petitioner, UtahAmerican Energy, Inc. ("UEI") and respondent, the Division of Oil, Gas and Mining ("Division"), through their respective counsel, stipulate as follows:

1. The Request for Hearing and Request for Agency Action filed with the Board of Oil, Gas and Mining ("Board") on August 16, 2002 seeking to appeal the Division's July 19, 2002 Determination to Deny Application in Part, shall be stayed and held in abeyance by the

Board without prejudice to either party until such time as either: (1) the Division issues a final decision to deny or grant UEI's permit application package C/007/013-PM02B-1; or (2) UEI gives notice of its intention within the time limits prescribed not to respond to the Division's technical review decision, and to seek review by the Board of a decision denying the application in part.

2. The parties further stipulate that all future decisions by the Division in its technical review process of UEI's permit application package shall be subject to this stipulation, if it is applicable, and the right of UEI to file a Request for Hearing and Agency Action to appeal such decisions shall be preserved and the right of the Division to object to such appeals shall be held in abeyance until such time as either: (1) the Division issues a final decision to deny or grant UEI's permit application package C/007/013-PM02B-1; or (2) UEI gives notice within the time limits prescribed of its intention not to respond to the Division's technical review decision and to seek review by the Board of any decision denying the application in part.

3. The parties further stipulate that this matter may be submitted to the Board, for approval of the Order without a hearing within 30 days of UEI's request, at the next regularly scheduled September Board meeting, and UEI waives the requirement for hearing within thirty days.

4. The parties hereby jointly move this Board to enter the proposed order filed contemporaneously herewith staying the current and future proceedings in accordance with the terms of this stipulation.

RESPECTFULLY SUBMITTED this 27<sup>th</sup> day of August, 2002.

SNELL & WILMER L.L.P.

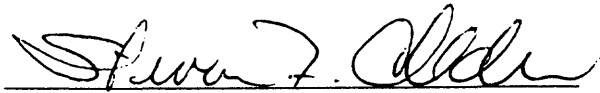
Handwritten signatures of Denise A. Dragoo and Wade R. Budge, written over a horizontal line.

Denise A. Dragoo

Wade R. Budge

*Attorneys for Utah American Energy, Inc.*

UTAH ATTORNEY GENERAL

Handwritten signature of Steven F. Alder, written over a horizontal line.

Steven F. Alder, Assistant Attorney General

*Attorneys for the Division of Oil, Gas and  
Mining*

## DIVISION'S EXHIBIT 3

OCT 04 2002

**BEFORE THE BOARD OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH**

y.

### Intervener Respondent

: Docket No. 2002-014  
:  
:  
: Cause No. C/007/013-PM02B

## 11

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### ORDER STAYING PROCEEDINGS

Having been presented with a Stipulation and Joint Motion to Stay Proceedings on Appeal, and good cause appearing:

The Board hereby orders that the appeal of UtahAmerican Energy, Inc. ("UEI") is stayed until such time as (1) the Division of Oil, Gas and Mining ("Division") issues its final decision to deny or grant UEI's permit application package C/007/013-PM02B-1; or (2) UEI gives notice within the prescribed applicable time limits of its intention not to respond to the Division's technical review decision and to seek review by the Board of any decision denying the application in part.

The Board further orders that all future decisions by the Division in its technical review process of UEI's permit application package shall be subject to this Stipulation and that the right of UEI to file a Request for Hearing and Agency Action to appeal such decisions and the right of the Division to object to such appeals shall be held in abeyance until such time as either: (1) the Division issues a final decision to deny or grant UEI's permit application package C/007/013-PM02B-1; or (2) UEI gives notice within the time limits prescribed of its intention not to respond to the Division's technical review decision and to seek review by the Board of any decision denying the application in part.

For all purposes, the Chair's signature on a faxed copy of this Order shall be deemed the equivalent of a signed original.



CERTIFICATE OF MAILING

True and correct copies of the foregoing ORDER STAYING PROCEEDINGS AND GRANTING REQUEST OF SOUTHERN UTAH WILDERNESS ALLIANCE TO INTERVENE, Docket No. 2002-014, Cause No. C/007/013-PM02B, were mailed, postage prepaid, this 7<sup>th</sup> day of October, 2002 to the following:

Denise A. Dragoo  
Wade R. Budge  
SNELL & WILMER LLP  
15 West South Temple, Suite 1200  
Salt Lake City, Utah 84101  
*Attorneys for UtahAmerican Energy, Inc.*

J. Mark Ward  
Assistant Attorney General  
1594 West North Temple, Suite 300  
Salt Lake City, Utah 84116  
(Hand Delivered)  
*Attorney for Board of Oil, Gas & Mining*

Steven F. Alder  
Assistant Attorney General  
1594 West North Temple, Suite 300  
Salt Lake City, Utah 84116  
(Hand Delivered)  
*Attorney for Division of Oil, Gas & Mining*

W. Herbert McHarg  
Southern Utah Wilderness Alliance  
P.O. Box 401  
Monticello, Utah 84535  
*Attorney for SUWA*

Diane Holland

OCT-04-2002 FRI 12:13 PM OIL, GAS & MINING

FAX NO. 801 359 3940

DATED this 4<sup>th</sup> day of October, 2002.

BOARD OF OIL, GAS & MINING

Elise L. Erler

Ms. Elise L. Erler, Chair

## **DIVISION'S EXHIBIT 4**

BEFORE THE DIVISION OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH

--- ooOoo---

IN THE MATTER OF THE LILA CANYON EXTENSION TO THE HORSECANYON MINE, CARBON AND EMERY COUNTIES, UTAH		INFORMAL CONFERENCE  FINDINGS, CONCLUSIONS AND ORDER  CAUSE NO. C/007/013
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---ooOoo---

On July 7, 2004, the Division of Oil, Gas and Mining ("Division") held an informal conference concerning Utah American Energy Inc's (UEI's) application for a new Coal Mining and Reclamation Permit (MRP) for the Lila Canyon Extension to the Horse Canyon Mine, Carbon and Emery Counties, Utah. The request for an informal conference was made by Southern Utah Wilderness Alliance (SUWA) by Fax to the Division, May 26, 2004.

The following individuals attended:

Presiding: Lowell P. Braxton  
Director  
Division of Oil, Gas and Mining

Petitioner: W. Herb McHarg and Elliot W. Lipps  
For Southern Utah Wilderness Alliance

Applicant: Denise Dragoo and Jay Marshall  
For UtahAmerican Energy Inc.

Interested  
Party: Ray Peterson and Ira Hatch, for  
Emery County

### FINDINGS OF FACT

1. The administrative completeness determination for the subject permit that triggered this informal conference was made by the Division on March 26, 2004.
2. The opportunity for the public to provide written comments or request an informal conference for this decision closed May 27, 2004.
3. By Fax dated May 26, 2004, SUWA requested an informal conference to discuss issues of concern regarding the Utah Division of Oil, Gas and Mining's determination of Administrative Completeness for the subject permit application package.
4. The Division made an earlier administrative completeness determination for this same permit application package that resulted in an informal conference being held May 21, 2002.
5. The protracted permitting activity that occurred between the earlier determination of administrative completeness prompted the Division to make the Division a second administrative completeness determination on March 26, 2004, thereby re-opening the public comment opportunity referenced in 1, above.
6. Notice of the July 7, 2004 informal conference was properly given.
7. The request for an informal conference was timely.
8. Prior to the conference, a telephone conference call was held by attorneys for the Division, the Petitioner, and the Applicant (Emery County was not a party at that time), to discuss the agenda and timeline for conduct of the July 7, 2004 informal conference.
9. All parties to the conference call agreed to the agenda.
10. Pursuant to Utah Code Ann. Section 40-10-13 and Utah Administrative Rule R645-300-123, an informal conference in the matter was held on July 7, 2004.
11. A record of the informal conference was made by Scott M. Knight, RPR, Thacker & Co., Salt Lake City, UT.
12. The record referenced at 11, above, and a list of those attending the informal conference will be maintained in the conference file.
13. The participants in this informal conference were Southern Utah Wilderness Alliance, Emery County, and Utah American Energy, Inc.
14. The Division and Applicant may require additional time to complete the TA review of the application and to consider the additional information provided at the informal conference.
15. A final decision on the application may require more than 60 additional days, allowed by rule, from the date of closing of the conference.

### CONCLUSIONS OF LAW

1. Utah Administrative Rule R645-300-123 grants affected parties an opportunity to request an informal conference on the application for a new permit.
2. Utah Administrative Rule R 645-300-120 et sec., provides for public participation and comment on a PAP at the time an administrative completeness determination is published.
3. At the informal conference on July 7, 2004 the public was provided an opportunity to comment on the application for the Lila Canyon Extension to the Horse Canyon Mine in the manner anticipated by R645-300-123.
4. R645-300-131.100 requires that a decision on the application be made within 60 days of the closing of the informal conference.
5. The Divisions may require additional time beyond 60 days to review the TA in light of the status of the current review and the additional information provided at the informal conference and may require additional public comment.
6. The hearing examiner may reconvene the informal conference if he determines that additional public comment is necessary.

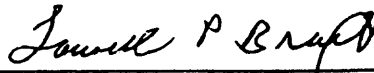
### ORDER

NOW THEREFORE, it is ordered that:

1. The materials submitted by the participants at the July 7, 2004 informal conference and the record created at this conference shall be reviewed and considered by the Division in the normal course of its ongoing review of the new permit for the Lila Canyon Extension of the Horse Canyon Mine.
2. The Division's determination of Technical Adequacy (the TA) shall consider technical issues raised by parties to this conference.
3. Where appropriate, the TA may describe the Division's basis for not incorporating a party's materials or requests into the PAP.
4. The Division shall provide a copy of the final TA to the parties to this Conference.

5. The informal conference shall remain open, and be continued without date during the pendency of the Division's review of the technical adequacy of the Lila Canyon Extension of the Horse Canyon Mine to accommodate the need for additional public comment.
6. If within 15 days of the Division's<sup>15</sup> notification to a party in this conference of the completion of the final TA a party requests an opportunity to discuss the TA with the Division, the Division will schedule and conduct such a meeting within 30 working days of a party's notification.

SO DETERMINED AND ORDERED this 30 day of, July 2004



Lowell P. Braxton, Director  
Division of Oil, Gas and Mining  
State of Utah

vs.

cc: Lowell Braxton  
Mary Ann Wright  
Herb McHarg, SUWA  
Denise Dragoo, UEI  
Jay Marshall, UEI  
Ira Hatch, Emery Co

P:\GROUPS\MINES\WP\inf\_conference\Horse Canyon\Lila Canyon Findings.doc

## CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing Finding, Conclusions and Order for Cause No. C/007/013 to be mailed by certified mail, postage prepaid, on the 3<sup>rd</sup> day of August 2004 to the following:

Jay Marshall  
UtahAmerican Energy, Inc.  
P.O. Box 986  
Price, Utah 84501


Denise Dragoo  
Snell & Wilmer  
Gateway Tower West  
15 West South Temple, Suite 1200  
Salt Lake City, Utah 84101

W. Herbert McHarg  
Southern Utah Wilderness Alliance  
Moab Office  
76 South Main #9  
Moab Utah, 84532

Kathy C. Weinberg, Esq.  
JENNER& BLOCK  
1717 Main Street, Suite 3150  
Dallas, TX 75201

Ira Hatch  
Emery County  
P.O. Box 629  
Castle Dale, Utah 84513

Mary Ann Wright  
Division Oil, Gas & Mining  
1594 West North Temple, Suite 1210  
Salt Lake City, Utah 84114-5801  
HAND DELIVERED

  
Vickie Southwick  
Executive Secretary  
Division of Oil, Gas and Mining



## DIVISION'S EXHIBIT 5

**From:** "Pete Rutledge" <PRutledge@osmre.gov>  
**To:** <pamgrubaughlittig@utah.gov>  
**Date:** 1/4/2006 12:22:36 PM  
**Subject:** 106 consultation delegation

Pursuant to 36 CFR 800.2 and in keeping with the intent of the Utah Cooperative Agreement as set out in 30CFR 944.30 Article I:B. the Utah Division of Oil, Gas And Mining is delegated authority to conduct the 106 consultation process for the Lila Canyon mining plan and permitting process.

**CC:** "Ranvir Singh" <RSingh@osmre.gov>, "James Fulton"  
<JFulton@osmre.gov>

## **DIVISION'S EXHIBIT 6**

**BEFORE THE DIVISION OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH**

---00000---

IN THE MATTER OF LILA  
CANYON EXTENSION TO THE  
HORSE CANYON MINE,  
CARBON AND EMERY  
COUNTIES, UTAH

:  
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:

STIPULATION TO AMEND

ORDER

CAUSE NO. C/007/013

---00000---

The Division of Oil, gas, and Mining, (Division), UtahAmerican Energy Inc., (UEI), Emery County, and the Southern Utah Wilderness Alliance (SUWA), parties to the above entitled Informal Conference, HEREBY agree and stipulate as follows:

**RECITALS**

1. The Division has determined that: tribal consultation as required by Section 106 of the National Historic Preservation Act (NHPA) pursuant to 36 CFR Part 800 has not been completed and must be done as part of the permit review process; this consultation has been delegated to the Division by OSM pursuant to 36 CFR 800.2(a); the time required to complete this consultation and make a finding as required by the NHPA will extend the process for at least 60 days; and the actual amount of additional time will depend on the nature of the responses.
2. A decision based on incomplete analysis and made prior to completion of the Section 106 consultation, would be a partial approval and a partial denial, or require a modification of the permit application, and proceeding with such a partial decision would put all parties to the burden of filing appeals and then either proceeding to

appeal the partial actions, or stipulate to holding the appeal of the decision in abeyance pending complete evaluation of the application.

3. The Division and UtahAmerican Energy Inc., (UEI), the permit applicant, have entered into a letter agreement attached to this Stipulation providing that the time limits provided in Utah Code §40-10-14(1) shall be extended for time required to complete the tribal consultations and determinations required by NHPA prior to issuing a permit.

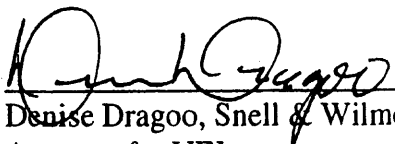
#### STIPULATION

NOW THEREFORE, the parties to the Informal conference stipulate that:

1. The Order requiring the Division to issue written findings granting or denying the permit in whole or in part within 60 days of the informal conference be amended consistent with the letter agreement between the Division and UEI; and
2. The Amended Order provide that the Division be allowed additional time prior to making its final decision on the permit application, as necessary to complete the tribal consultations and determinations required by NHPA .

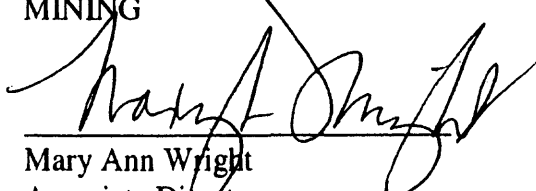
AGREED TO on behalf of the parties on the date last executed by the signatures of the following persons

UTAHAMERICAN ENERGY INC., (UEI)

  
Denise Dragoo, Snell & Wilmer  
Attorney for UEI

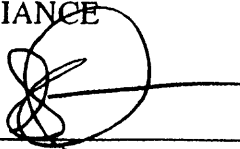
Dated 01/17/06

UTAH DIVISION OF OIL, GAS, &  
MINING

  
Mary Ann Wright  
Associate Director

Dated 1/18/06

SOUTHERN UTAH WILDERNESS  
ALLIANCE

  
\_\_\_\_\_  
Stephen Bloch, Attorney for SUWA

Dated 1/17/06

EMERY COUNTY

  
\_\_\_\_\_  
Ira Hatch, Commissioner

Dated 01/17/06

**BEFORE THE DIVISION OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH**

---oo0oo---

IN THE MATTER OF LILA  
CANYON EXTENSION TO THE  
HORSE CANYON MINE,  
CARBON AND EMERY  
COUNTIES, UTAH

:  
:  
:  
:

AMENDMENT TO

ORDER

CAUSE NO. C/007/013

---oo0oo---

The Division of Oil, Gas, and Mining, (Division), UtahAmerican Energy Inc., (UEI), Emery County, and the Southern Utah Wilderness Alliance (SUWA), parties to the above entitled Informal Conference, have filed a Stipulation (with an attached Letter Agreement between the Division and UEI) requesting that the presiding Officer Amend his Order issued on December 2, 2005 to the extent that an amendment of the Order may be necessary, to provide that the Division be allowed additional time prior to making its final decision on the permit application, as necessary to complete the tribal consultations and determinations required by National Historic Preservation Act.

Based on this Stipulation, in order to accommodate the Division's careful and lawful completion of its review of the application, to provide for the efficient complete review of the permit application, to facilitate a review of the application in a manner that is in the best interest of all of the parties to the Informal Conference, and for good cause appearing;

IT IS HEREBY ORDERED that:


1. The Order issued December 2, 2005 is Amended to provide that the Division shall make its decision on the permit application upon completion of the tribal

consultations and determinations required by National Historic Preservation

Act or as soon thereafter as reasonable to prepare the decision; and

2. Except as modified by this Amended Order, the Order and the accompanying Findings of Fact, Conclusions of Law and Order remain in effect without alteration.

DATED this 19<sup>th</sup> day of January, 2006

  
\_\_\_\_\_  
John R. Baza, Director  
Division of Oil, Gas and Mining



## CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing Notice of Supplemental to Amend Informal Conference for Cause No. C/007/013 to be mailed by certified mail, postage prepaid, on the 20 day of January 2005 to the following:

7099 3400 0016 8895 6733

Jay Marshall  
UtahAmerican Energy, Inc.  
P.O. Box 986  
Price, Utah 84501

7099 3400 0016 8895 6726

Denise Dragoo  
Snell & Wilmer  
Gateway Tower West  
15 West South Temple, Suite 1200  
Salt Lake City, Utah 84101

7099 3400 0016 8895 6719

Steve Bloch  
Southern Utah Wilderness Alliance  
425 East 100 South  
Salt Lake City, Utah 84111

7099 3400 0016 8895 6702

Ira Hatch  
P.O. Box 629  
Castle Dale Utah 84513

---

Vickie Southwick  
Executive Secretary  
Division of Oil, Gas and Mining

4/11/07

Copy to MAW  
PGL  
DWH

Steven F. Alder  
James P. Allen  
UTAH ATTORNEY GENERAL'S OFFICE  
1594 W. North Temple #300  
Salt Lake City, UT 84116  
*Attorneys for Respondent*  
*Utah Division of Oil, Gas, & Mining*

**FILED**

**APR 10 2007**

**SECRETARY, BOARD OF  
OIL, GAS & MINING**

**BEFORE THE BOARD OF OIL, GAS, AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
STATE OF UTAH**

In the Matter of the Request for Agency  
Action by

UTAHAMERICAN ENERGY INC.,

Petitioner,

For Review of the Division's  
January 19, 2007 Decision

**MOTION FOR PRE-HEARING  
CONFERENCE**

Cause No. C/007/013-SR-98(1)-A

Docket No. 2007-008

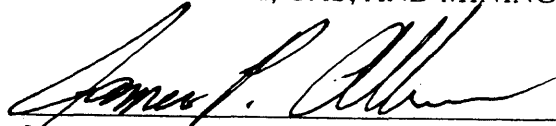
The Utah Division of Oil, Gas, and Mining (Division) hereby moves the Board to schedule a PRE-HEARING CONFERENCE regarding the petition of UtahAmerican Energy, Inc., (Petitioner) for Review of the Division's January 19, 2007 Decision Requiring Modification of its Mining and Reclamation Plan as provided for at Utah Administrative Code R641-107-100 (2007). The Division asks that the pre-hearing conference be set for April 18, 2007 at 10:00 a.m., or as soon thereafter as the same may be scheduled.

The reason for requesting a Pre-Hearing Conference is to provide an opportunity for the Board and the parties to discuss the nature and scope of the issues, arguments, and testimony that may be presented at the hearing on the above-named Petition and establish procedures to be followed at the hearing and prior to the hearing governing disclosure of

witnesses, exchange of exhibits, limitations on filing motions and memoranda, and other pre-hearing procedures the board sees as helpful or necessary. Specifically the Division asks that the Board require the Parties to identify at the pre-hearing conference any proposed motions not yet filed, any proposed testimony for any witnesses expected to testify at the hearing, all exhibits anticipated to be presented at the hearing, and to set a time for exchange of any supplemental exhibits, motions and other pleadings.

Respectfully submitted this 10<sup>th</sup> day of April, 2007.

DIVISION OF OIL, GAS, AND MINING

A handwritten signature in cursive script, appearing to read "James P. Allen", written over a horizontal line.

James P. Allen (#11195)

Steven F. Alder (#0035)

Assistant Attorneys General